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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections of)
the Cable Television Consumer) CS Docket No. 95-174
Protection and Competition Act)
of 1992 -- Rate Regulation)
)
Uniform Rate-Setting Methodology)

REPORT AND ORDER

Adopted: March 13, 1997

Released: March 14, 1997

By the Commission:

I. INTRODUCTION

1. On November 29, 1995, the Commission issued a Notice of Proposed Rulemaking ("Notice") in which we explored the establishment of an optional rate-setting methodology where a cable operator could establish uniform rates for uniform cable service tiers offered in multiple franchise areas.¹ We find that the establishment of such uniform rates would benefit both cable service subscribers and cable operators. We also find, however, that the implementation of uniform rates raises several complex case-by-case issues. Accordingly, we hereby permit the establishment of uniform rates across multiple franchise areas on a case-by-case basis upon the Commission's finding that the cable operator's submission of a proposed uniform rate proposal and supporting justification demonstrates that the proposed rate structure will be reasonable, taking into account all critical factors relevant to its implementation, and subject to one important condition. Under any uniform rates approach permitted by the Commission, rates for regulated basic service tiers ("BSTs") may not exceed the BST rates that would be established under our existing regulations; thus, BST rates will either decrease or remain the same under a uniform rates mechanism.

2. As discussed more fully below, we have concluded that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all areas would be beneficial for subscribers, franchising authorities ("LFAs"), and cable operators. Whether to seek to implement uniform rates, however, will be left to the discretion of cable operators. A

¹Notice of Proposed Rulemaking in CS Docket No. 95-174 (In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, Uniform Rate-Setting Methodology), 11 FCC Rcd 3791 (1995).

uniform rates approach could facilitate an operator's ability to promote its service on a regional basis. This approach could better inform consumers and enable them to compare packages of services offered by competitors, thereby improving competition among providers. Increased competition could result in improved service and reduced rates for subscribers.

II. BACKGROUND

3. As stated in the *Notice*, under the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act")² and the Commission's implementing regulations,³ a cable operator serving multiple franchise areas must establish maximum permitted rates independently in each franchise area.⁴ Rate-regulated services consist of the basic service tier ("BST"), which includes, at a minimum, all local broadcast stations and public, educational, and governmental ("PEG") access channels carried on the system,⁵ and the cable programming services tier ("CPST"), which includes all non-BST programming offered over the cable system, other than programming offered on a per channel or per program basis.⁶

4. We stated in the *Notice* that under the primary method of cable service rate regulation a regulated cable system determines its maximum permitted initial rates pursuant to a benchmark formula,⁷ which generates a rate for a particular franchise area based upon characteristics specific to the cable system within that franchise area, including: the number of subscribers, additional outlets and remote control units; the number of times subscribers changed the tiers of service they receive; and the census income level. Other variables include: the number of channels per tier; number of regulated non-broadcast channels per tier; number of system-wide subscribers; whether the system is part of a multiple system operation; and, if so, the number of systems in the operation.⁸ On a going-forward basis, a benchmark operator may, and sometimes must, adjust initial rates for changes in inflation and other costs,⁹ and may

²Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

³47 C.F.R. §§ 76.901-86.

⁴*Notice*, 11 FCC Red at 3791.

⁵Communications Act § 623(b)(7)(A).

⁶*Id.* at 623(l)(2). Per channel and per program offerings are generally exempt from rate regulation.

⁷*Notice*, 11 FCC Red at 3792-93 (*citing* 47 C.F.R. § 76.922).

⁸FCC Form 1200: Setting Maximum Initial Permitted Rates for Regulated Cable Services Pursuant to Rules Adopted February 22, 1994 (May 1994).

⁹47 C.F.R. § 76.922(a).

increase rates to reflect the addition of new programming services to regulated tiers.¹⁰

5. We noted that enforcement of the rate regulations is divided between qualified local franchising authorities ("LFAs") and the Commission.¹¹ BST rate regulation is generally enforced by qualified LFAs.¹² An operator's CPST, on the other hand, is subject to rate regulation directly by the Commission.¹³ Commission enforcement of CPST rate regulation is triggered by the filing of a complaint by the relevant franchising authority.¹⁴

6. As described in the *Notice*, the benchmark approach requires an operator to establish independent rates in each franchise area served, since many of the variables used to generate the maximum rate are franchise-specific. We noted, for example, that the census income and subscribership variables are measured on a franchise area basis and necessarily will vary among franchise areas. We further noted that a disparity in rates among franchise areas will likely occur even if the operator provides an identical package of service to multiple franchise areas, or provides cable service through a single, integrated cable system, since in these cases regulated rates are set separately for each franchise area based in part on franchise-specific variables.¹⁵

7. We also discussed the situation where a cable operator acquires a number of contiguous systems from other entities and seeks to establish uniform rates and services for those systems. We stated that, under the Commission's "going-forward" rules, the operator will typically have the flexibility to add channels to certain systems and delete channels from others to establish a uniform programming line-up. The operator's efforts, however, to set a uniform rate will be constrained because the going-forward rules specifically dictate permitted rate changes that must accompany changes in the level of service and do not permit regional averaging of the data used to compute rates.¹⁶

¹⁰See 47 C.F.R. § 76.922(d) and (e); see also *Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking in MM Docket No. 92-266* (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), 10 FCC Rcd 1226 (1994) ("*Sixth Recon. Order*").

¹¹*Notice*, 11 FCC Rcd at 3794.

¹²See 47 C.F.R. §§ 76.910, 76.922-23.

¹³Communications Act § 623(c)(1).

¹⁴*Id.* § 623(c)(1)(B). See also Telecommunications Act of 1996 § 301, Pub. L. No. 104-104, 110 Stat. 56, approved February 8, 1996 (the "1996 Act"); 47 C.F.R. § 76.1402(a). Prior to the 1996 Act, the Commission received CPST complaints directly from subscribers, and other state and local entities, in addition to from LFAs.

¹⁵*Notice*, 11 FCC Rcd at 3795.

¹⁶*Id.* at 3795-96.

8. In the *Notice*, we tentatively concluded that permitting operators serving multiple franchise areas to establish uniform services at uniform rates in all areas would be beneficial for subscribers, franchising authorities, and operators.¹⁷ We stated that such an approach could facilitate an operator's advertisement of a single rate for cable service over a broad geographic region, which could lower its marketing costs and enhance its ability to respond to competition from alternative service providers that may establish and market uniform services without regard to franchise area boundaries.¹⁸

9. In the *Notice*, we requested suggestions for an appropriate method for the establishment of uniform rates, and offered for comment two specific alternatives that would be revenue-neutral to an operator.¹⁹ Under the first approach, an operator generally would set BST rates equal to the lowest BST rate for any one franchise area as determined under our existing rate regulations and recoup the resulting foregone BST revenue in a new uniform CPST rate charged to CPST subscribers.²⁰ Under the second approach, an operator would generally determine a blended average rate for BSTs and CPSTs, respectively, pursuant to a formula designed by the Commission.

10. In the context of both approaches, we sought comment on various aspects of a cable operator's establishment of uniform rates for uniform services, including: (1) how an operator would determine equipment rates;²¹ (2) the costs and benefits of requiring an operator, if it chose to set the uniform rate in unregulated franchise areas, to base the uniform rate in part on data from unregulated areas;²² (3) how an operator would apply our going-forward policies;²³ (4) whether this approach would protect cable subscribers from unreasonable rates in accordance with the 1992 Cable Act, and whether an operator should be required to phase-in any resulting CPST rate increases;²⁴ (5) whether a cable operator's setting of uniform rates should be restricted to franchise areas located within some level of proximity to each other, such as the Area of Dominant Influence, the same county or state, or whether a cable operator should be permitted

¹⁷*Id.* at 3796.

¹⁸*Id.*

¹⁹*Id.* at 3797.

²⁰*Id.* at 3797-98.

²¹*Id.* at 3798.

²²*Id.* at 3798, 3799.

²³*Id.* at 3799.

²⁴*Id.* at 3800.

to select the region in which to set uniform rates;²⁵ and (6) how PEG and other franchise-related expenses should be addressed in the context of uniform rates.²⁶

III. DISCUSSION

11. Much of the record submitted in response to the *Notice* generally endorses our proposal to establish an optional approach under which a cable operator could set uniform rates for uniform services offered in multiple franchise areas, as stated in the *Notice*.²⁷ Most commenting cable operators believe that uniform rates would: (1) facilitate a cable operator's ability to promote its services on a regional basis;²⁸ (2) better inform consumers and enable them to compare packages of services offered by competitors, thereby improving competition among service providers;²⁹ (3) improve a cable operator's ability to provide customer service by facilitating an operator's ability to centralize service;³⁰ and reduce subscriber confusion of those who move from one part of the service area to another and currently must pay a different amount for the same level of cable service, even if the service is provided by the same cable operator.³¹

²⁵*Id.* at 3796-97.

²⁶*Id.* at 3800-01.

²⁷*See, e.g.*, Metropolitan Dade County ("Dade County") Comments at 2; Massachusetts Cable Television Commission ("Massachusetts Commission") Comments at 1-3; Cablevision Systems Corporation ("Cablevision") Comments at 4-6; Blade Communications, Inc. ("Blade") Comments at 1-2; MediaOne, Inc. ("MediaOne") Comments at 2-3. A list of the parties submitting comments and reply comments and the abbreviations used in this Order to refer to those parties are listed in the attached appendix.

²⁸*See, e.g.*, TCI and Continental Comments at 2-4; Cablevision Comments at 7-9 (describing how uniform rates will reduce costs of printing rate cards); MediaOne Comments at 2-3.

²⁹*See, e.g.*, TCI and Continental Comments at 2-4; Adelphia Comments at 1-2; Cole, Raywid & Braverman ("Cole, Raywid") Comments at 2; Time Warner Reply Comments at 2-3.

³⁰*See, e.g.*, TCI and Continental Comments at 2-4; Blade Comments at 1-2.

³¹*See, e.g.*, Tele-Communications, Inc. and Continental Cablevision, Inc. ("TCI and Continental") Comments at 2-4; Adelphia Communications Corp. ("Adelphia") Comments at 1-2; Blade Comments at 1-2; Time Warner Cable, Inc. ("Time Warner") Reply Comments at 2-3; Dade County Comments at 2. *See also* New Jersey State Board of Public Utilities ("NJBP") Comments at 2 (describing its generally positive experience with uniform rates); Massachusetts Commission Comments at 2, 7 (describing its belief that the Commission's proposal could improve subscriber awareness of current and future cable service rates). *But see* National Association of Telecommunications Officers and Advisors ("NATOA") Comments at 4-5 (Under the proposal, a "significant" number of subscribers who do not move "will experience rate increases. These increases, which may not be associated with any service changes or improvements, will undoubtedly confuse subscribers."); City of Rock Hill, South Carolina ("Rock Hill") Comments at 1-2 ("Subscribers moving from one part of an MSO's service area to another anticipate variances in . . . costs. Typically electric, water and sewer, property taxes, sanitation rates . . . all change when someone moves. . . . Furthermore, only a small fraction of the new households in any community represent internal moves.").

12. Certain LFAs and representatives of LFAs commenting on the *Notice* also support the intended effects of the uniform rates proposal.³² The State of New Jersey, which serves as a state-wide LFA, already permits cable operators to establish uniform regulated cable service rates where uniform services are offered in multiple contiguous systems. As a result, cable systems in New Jersey charge uniform rates for uniform services offered in as many as 53 contiguous municipalities.³³ The Massachusetts Commission, which is the cable regulatory body for the State of Massachusetts, also endorses the goals of uniform rates, and notes that three cable systems will soon control approximately 75% of the market in Massachusetts. The Massachusetts Commission offers itself as a pilot program in which uniform rates established under a Commission proposal could be tested before being implemented nationwide.³⁴

13. As a general matter, we agree with these parties and continue to believe that, under certain conditions, allowing a cable operator to establish uniform regulated cable service rates across multiple franchise areas could benefit consumers, LFAs and the cable operator. The record, however, indicates that the Commission's adoption of a specific methodology that would be applicable to all cable operators nationwide may not be the most feasible course of action, given variations in factors from system to system.³⁵ We will, therefore, establish procedures to permit uniform rates across multiple franchise areas through the Commission's case-by-case review of a cable operator's proposed uniform rate structure. These procedures will permit the Commission to take account of the variations between cable systems and of the comments of affected LFAs. Accordingly, a cable operator seeking to establish uniform rates will be required to submit a proposal with supporting justification that states fully and precisely all pertinent facts and considerations relied on to demonstrate that the proposed rates will not be unreasonable.

14. Under the rate-setting approach adopted herein, a cable operator may submit to the Commission a proposal for establishing uniform rates for uniform services offered in multiple franchise areas. The Commission, however, will not specify a particular methodology for setting uniform rates. The only condition we place on any proposed uniform rates mechanism is that the BST rates may not exceed the BST rates that would be established under our existing regulations. In addition, below we offer general guidelines that the Commission will consider in deciding whether to approve a particular proposed mechanism.

15. A cable operator will be required to submit with its proposal a certificate of service

³²Dade County Comments at 2; NATOA Comments at 2-3 ("The goals cited by the Commission -- reducing consumer confusion and promoting operational efficiencies -- are meritorious. . . . NATOA is not opposed to uniform rates.").

³³NJBPU Comments at 3-4.

³⁴Massachusetts Commission Comments at 14-15.

³⁵See, e.g., NATOA Comments at 4-5; Rock Hill Comments at 1-2; Dade County Comments at 4; Massachusetts Commission Comments at 5; LFA Coalition Reply Comments at 17; Florida Cities Comments at 3-4.

showing that the proposal and its supporting justification have been served on all affected LFAs.³⁶ The Commission will place the operator's filing on public notice. Interested persons, including the affected LFAs, may submit comments on the proposal within sixty days after the date of the public notice.³⁷ The cable operator may file a reply to the comments within thirty days thereafter.³⁸ The Commission will consider the justification, as well as all other submitted materials, and determine whether the proposed uniform rates will not be unreasonable. Pursuant to this *Order* and any conditions established in a Commission decision on a particular proposal, the Commission may approve uniform rates notwithstanding any differences between the uniform rates and the rates that would be determined under our existing benchmark rate formula.

16. Some LFAs express concern that a uniform rates mechanism will not protect subscribers from unreasonable cable service rates, as required under the 1992 Cable Act.³⁹ On the contrary, we believe that, in any event, rates will remain reasonable under any uniform rates approach approved by the Commission. First, it is important to note that, while the benchmark formula is the most widely used method for determining rates in compliance with our rules, we have found rates other than, or that vary from, benchmark rates to be reasonable. For example, an operator may elect to justify BST and CPST rates based on a cost-of-service showing.⁴⁰ In addition, an operator may offer subscribers a "new product tier" (NPT) and price that tier as it chooses so long as it complies with the conditions described in the *Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking* in MM Docket Nos. 92-266 and 93-215, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (the "*Going Forward Order*").⁴¹ The Commission has also eliminated the "all rates in play" approach so that, if no complaint

³⁶See also discussion below of LFAs' involvement in the review and approval of an operator's proposed uniform rate structure, and how their level of involvement will not significantly differ from that under the existing benchmark process.

³⁷These comments must be served on the cable operator.

³⁸This reply must be served on any parties submitting comments on the initial justification. In addition, the Commission may, for good cause, specify an altered time period for either the comments or replies concerning any such justification.

³⁹See generally, NATOA Comments at 4-5 ("First, if either of the two approaches proposed by the Commission were adopted, many subscribers would experience rate increases without receiving any concurrent service improvements."); Florida Cities Comments at 4 (contending that allowing unregulated areas to be included in the uniform region may result in rates higher than those permitted under the benchmark formula); LFA Coalition Reply Comments at 26 (stating that under one of the *Notice's* proposed methodologies, "roughly half of all basic subscribers will pay more, as will the same fraction of CPS subscribers; under the other . . . proposal, most subscribers will pay less for basic, but all will pay more for CPS.");

⁴⁰47 C.F.R. § 76.922 (cost-of-service rules).

⁴¹10 FCC Rcd 1226, 1234-38 (1994). In the *Going-Forward Order*, the Commission determined that prices for NPTs would remain reasonable because of competitive pressures from the operator's existing CPST.

concerning a CPST rate or rate increase was filed before November 6, 1995, the cable operator's CPST rate as of that date would be deemed not unreasonable under our rules.⁴² This may lead to a rate being deemed not unreasonable although the rate might not be accepted under our benchmark formula.⁴³ Finally, the Commission has allowed, subject to certain conditions, agreements among LFAs and small cable operators to serve as yet another alternative method or process for establishing reasonable rates for regulated tiers of cable service.⁴⁴ Thus, there is no single formula for establishing regulated rates. Rather, there are a variety of measures that will produce reasonable rates. We believe that, under the uniform rates mechanism we adopt here, it will be possible to accommodate operators' needs for pricing flexibility to compete while still maintaining reasonable rates.

17. We further address the concerns of LFAs regarding the reasonableness of uniform rates by placing a condition on an operator's setting of uniform rates. That is, under any uniform rates structure established pursuant to this Order, BST rates for any subscriber in the affected areas may not exceed the BST rates that would be established under our existing regulations. Thus, LFAs can be assured that, at a minimum, BST rates will either decrease or remain unchanged.⁴⁵ For example, if an operator sought to implement uniform rates for three franchise areas where the maximum permitted BST rates are \$10.00, \$11.00 and \$12.00, respectively, any uniform rates proposal that resulted in a uniform BST rate greater than \$10.00 would be disapproved.

18. The fair implementation of a uniform rate approach is facilitated if the Commission can examine the methodology to be employed and the impact of that methodology on subscribers in advance of its implementation. Our approach will provide the Commission with the ability to render an informed and accurate decision on whether an operator's proposed uniform rates are not unreasonable. An operator's supporting justification must include a specific, detailed description of all relevant financial and economic data, and other factors (including particularly

⁴²Under the old approach, an operator's entire CPST rate structure was subject to regulatory review when the Commission receives a CPST rate complaint triggering regulation of the CPST. *Thirteenth Order On Reconsideration*, MM Docket No. 92-266 (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), 11 FCC Rcd 388, 450-452 (1995).

⁴³We also note that the Commission has an on-going proceeding in which we are considering increased pricing flexibility for operators that may result in somewhat higher CPST and lower BST rates. *See Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, MM Docket No. 92-266 and CS Docket No. 96-157, 11 FCC Rcd 9517, 9523 (1996) ("Cable Pricing Flexibility Notice").

⁴⁴*See, e.g., Eighth Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215 (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation) ("Small System Order"), 10 FCC Rcd 5179 (1995) (permitting certified LFAs, independent small systems, and small systems owned by small multiple system operators to enter into alternative rate regulation agreements).

⁴⁵This approach also will foster the development of a lower cost BST, which we endorsed in the *Cable Pricing Flexibility Notice*. *Cable Pricing Flexibility Notice*, 11 FCC Rcd at 9524-25.

local factors) that demonstrate the impact of the proposal on subscriber rates, and that justify the uniform rates as not unreasonable. This approach also will allow the Commission to consider the views of LFAs and consider whether the interests of subscribers will be protected under the new rate structure.⁴⁶

19. On a going-forward basis, we will require operators that establish initial uniform rates under the regulations we set forth here to adjust future rates on an annual basis, pursuant to FCC Form 1240. We believe that allowing rate changes no more frequently than annually will enhance the efficiency of rate review by LFAs. As under our current rules, review of adjustments to BST rates will be the responsibility of LFAs while the Commission will be responsible for review of CPST rates.⁴⁷

20. We seek to provide guidance in this Order to cable operators that propose uniform rates. First, as we already have indicated, implementing any uniform rate approach across multiple franchise areas inevitably raises issues that do not lend themselves to a global resolution. The most difficult and common issue arises when a cable operator is regulated by multiple LFAs, as compared to a single state-level or regional regulatory body. A methodology that would produce uniform rates throughout multiple franchise areas and would be applicable in one particular franchise area, for example, would be based in part on information that is particular to other franchise areas. Under both methodologies offered for comment in the *Notice*, a cable operator first would calculate its respective underlying rates under the Commission's existing rules for every franchise area and then calculate the uniform rate based on those underlying rates.⁴⁸ The uniform rate would be based in part on franchise-specific factors such as the numbers of subscribers, remote control units and additional outlets in the various franchise areas where the uniform rate is to be charged.

21. The *Notice* sought comment on how review by one LFA of a proposed uniform rate may affect implementation of that rate in other franchise areas.⁴⁹ First, some LFAs contend that a uniform rate approach could increase their administrative burden by requiring them to review the underlying data and rates for all local franchising areas where the uniform rate is charged in order to review the uniform rate charged in its local franchising area.⁵⁰ For example, the LFA Coalition asserts that "the proposal would increase the administrative burden on the City

⁴⁶We agree with NATOA that a record is necessary to evaluate cable operators' requests to establish uniform rates. NATOA Comments at 7 (urging the Commission to require detailed economic studies from a cable operator seeking to set regulated uniform rates).

⁴⁷47 C.F.R. §§ 76.910, 76.922-23; Communications Act § 623(c)(1).

⁴⁸*Notice*, 11 FCC Rcd at 3797-98.

⁴⁹*Notice*, 11 FCC Rcd at 3800.

⁵⁰Dade County Comments at 4 (discussing issue in the context of uniform rates that may cross county boundaries); Massachusetts Commission Comments at 5 (discussing issue when uniform rates cross state boundaries).

[of St. Louis] by over 30 times . . . ,” because approximately 30 local franchising areas could be covered by one cable operator’s uniform region.⁵¹ We disagree. The condition specified above, that requires that BST rates determined under a uniform rate approach may not exceed those established under our existing regulations, will ease LFAs’ regulatory burdens by ensuring LFAs that any BST rates they must review will either decrease or remain unchanged. LFAs’ administrative burdens therefore will not significantly increase because, given the above condition, an LFA can be assured that the proposed uniform BST rate to apply in its particular franchise area is reasonable for that area so long as the proposed rate is equal to or less than the existing rate that was previously determined and established under the current regulations.

22. Other LFAs responded to this inquiry by arguing that their jurisdiction over basic cable rates could be compromised under a uniform rates approach.⁵² For example, the LFA Coalition states that the proposal “improperly departs from the Cable Act, which requires that a cable system be responsive to local community needs and interests, as individually determined through the local franchising process by each local franchising authority.”⁵³ Florida Cities states that the “uniform rate setting system will have the practical effect of emasculating local franchising authorities’ power to regulate rates”⁵⁴ We also reject these arguments. First, we note the discussion above concerning an LFA’s option to participate vigorously in the Commission’s review of an operator’s proposed uniform rates approach.⁵⁵ Second, an LFA’s authority will not be undermined because the overall process for establishing and regulating uniform rates will be parallel to that of our current regulatory framework. In the development of the benchmark formula, for example, the Commission, after notice and comment and the participation of LFAs, established and approved the regulatory methodology that sets forth reasonable rates for the BST. Using the benchmark formula, the operator then submits proposed initial BST rates for review by each affected LFA.⁵⁶ If the BST rate is rejected by an LFA, the operator may appeal to the Commission, where the relevant LFA receives ample opportunity to defend its calculations and review of the operator’s proposed BST rates.⁵⁷ With respect to the optional rate-setting approach adopted herein, and as with our existing regulations, the Commission merely approves the general methodology to be employed by an operator, while

⁵¹City of Ann Arbor, Michigan; City of Dubuque, Iowa; Consolidated City of Indianapolis, Indiana; Montgomery County, Maryland; City of St. Louis, Missouri (“LFA Coalition”) Reply Comments at 7.

⁵²See, e.g., Town of Ocean City Reply Comments at 1.

⁵³LFA Coalition Reply Comments at 17 (emphasis deleted)(citing 47 U.S.C. §§ 521(2) and 546).

⁵⁴Florida Cities Comments at 1. See also LFA Coalition Reply Comments at 6-7 (arguing that Ohio Cable’s proposal will remove LFAs’ ability to set initial BST rates).

⁵⁵See *supra* para. 13.

⁵⁶47 C.F.R. §§ 76.922 and 76.933.

⁵⁷*Id.* § 76.944.

jurisdiction over an operator's implementation of a BST rate remains the exclusive responsibility of LFAs. Thus, contrary to some commenting LFAs' arguments, LFAs' statutory responsibility and obligation with respect to BSTs will not be hindered under a uniform approach.

23. Commenters suggest a variety of approaches for resolving conflicts that could arise if one LFA tolled the effectiveness of the proposed uniform rate in its franchise area while another LFA permitted the rate to take effect in its area.⁵⁸ Generally, commenting LFAs seek to maintain their existing authority over BST rates. Although they do not specifically address the tolling of proposed uniform rates, presumably these parties might argue that uniform rates could be disapproved by any one of the affected LFAs, and that rates would be tolled in all the franchise areas until an appeal of the relevant rate decision was resolved.⁵⁹ Cable operators, on the other hand, support allowing the proposed uniform rate to take effect immediately, subject to a later "true-up" of any discrepancies which the Commission subsequently finds to exist.⁶⁰ We believe that the current authority of LFAs should be preserved, and that subscribers must remain fully protected from unreasonable rate increases. Moreover, an operator seeking to take advantage of the benefits of establishing (or adjusting) uniform rates must also shoulder the risks of implementing uniform rates. We therefore will prohibit a proposed uniform rate to take effect subject only to a subsequent true-up. Rather, an LFA that rejects a proposed uniform rate may toll the effectiveness of that rate in that particular franchise area. Alternatively, if the LFA so chooses, the rate may take effect, however, but only subject to refunds as later determined by the LFA. An LFA's decision with respect to proposed rates will only have effect within the LFA's particular local franchise area, and not the implementation of rates in other franchise areas. We take this approach because it again parallels our current rules in that it neither increases or decreases LFAs' existing authority to review rates. We will, however, entertain proposals for innovative and efficient ways to implement uniform rates structures so long as they do not compromise LFAs' authority under our current rules. LFAs' concerns that their jurisdiction or authority over BST rates may be compromised under a uniform rates approach are thus addressed in this manner as well.

24. As indicated above, an operator may elect to implement a uniform rates structure in a region that covers both regulated and unregulated local franchise areas. Under this approach, an operator would include data from both the unregulated and regulated areas, and determine a uniform rate applicable in all such areas. Some commenting LFAs oppose allowing operators to include unregulated areas for purposes of uniform rates. The LFA Coalition, for example, asserts that "the Commission has no evidence that average [or uniform] rates -- and therefore

⁵⁸47 C.F.R. § 76.933.

⁵⁹See generally, LFA Coalition Reply Comments at 5-6; Cities of Cape Coral, Greenacres, Lantana, Miami, North Palm Beach, and Pensacola, Florida ("Florida Cities") Comments at 3 (questioning our authority to allow uniform rates and stating that our proposal will reduce LFAs' incentives to rate regulate).

⁶⁰MediaOne Comments at 8-9; Adelphia Comments at 5; Time Warner Reply Comments at 12.

overall rates -- will not go up" if unregulated systems are included.⁶¹ According to these LFAs, assuming an operator's rates are not regulated because the rates are reasonable is shallow and often incorrect.⁶² Dade County presumes that rates in unregulated areas will be higher than those in regulated areas, and thus asserts that permitting uniform rates to include unregulated areas will cause subscribers living in regulated areas to subsidize rates charged to subscribers in unregulated areas.⁶³

25. We believe that permitting uniform rates to include unregulated franchise areas could benefit subscribers living in the uniform rate region. For example, including data from all of the affected local franchise areas -- both regulated and unregulated -- could have a beneficial effect on subscriber rates when rates in unregulated areas are lower than those in the regulated areas. With respect to systems subject to effective competition, Congress determined that rate regulation was not necessary to ensure reasonable rates. With respect to cable systems potentially subject to regulation, but which are currently unregulated because no complaint has been filed, there is no evidence to suggest that these systems have unreasonable rates. Indeed, we would expect that if rates were unreasonable in these franchise areas, complaints would have been filed (especially prior to passage of the Telecommunications Act of 1996 when a single complaint was enough to trigger CPST rate review).⁶⁴ Accordingly, we do not believe that including unregulated systems for purposes of determining uniform rates is more likely to lead to unreasonable rates than using exclusively regulated systems to determine uniform rates. In addition, should the LFA in an unregulated area later elect to regulate the operator's BST, or should the operator's CPST rates become subject to regulation by the Commission, the operator still would be required to justify the rate in question under our current regulations. Thus, including unregulated areas in a uniform rate determination can produce benefits for subscribers, and subscriber's interests in reasonable rates will remain protected given the conditions described above.

26. With respect to the BST in regulated local franchise areas, the operator would submit to the LFA its proposed initial rates, using either the benchmark or cost-of-service mechanism, and the regulating LFA would have authority to review and approve or disapprove the proposed rates.⁶⁵ If the LFA determined that a reduction in BST rates is necessary to comply with the rules, the operator would be required to reflect this reduction in the rate charged in the region, if necessary. Again, nothing in this Order is intended to compromise LFAs' authority to regulate BST rates. With respect to CPST rates, we emphasize that, in reviewing a uniform rates proposal, we will closely examine the impact of the proposal on subscribers' rates, and would be

⁶¹LFA Coalition Reply Comments at 37.

⁶²*Id.*

⁶³Dade County Comments at 4.

⁶⁴1996 Act, § 301(b)(1), codified at Communications Act, § 623(c), 47 U.S.C. § 543(c).

⁶⁵47 C.F.R. §§ 76.922, 76.933, and 76.944.

disinclined to approve any scheme that results in a more than minimal increase in CPST rates for a large proportion of the affected subscribers.

27. Commenting cable operators argue that they will require broad discretion with respect to several aspects of setting uniform rates, including: (1) the size of the region in which to establish uniform rates;⁶⁶ (2) whether all franchise areas located within the uniform rate region must be included for purposes of calculating and offering the uniform rate;⁶⁷ (3) which tiers of regulated cable service should be offered at a uniform rate;⁶⁸ (4) the methodology employed to determine the uniform rate;⁶⁹ (5) how to address variances in the numbers of channels offered in various franchise areas;⁷⁰ and (6) how and whether to establish uniform rates for the installation or maintenance of equipment.⁷¹ We will review each cable operator's proposal on a case-by-case basis, and will take into consideration the specific elements of each proposal. However, we believe that the establishment of uniform rates will accomplish certain goals, such as providing cable operators with competitive pricing options, providing subscribers with less confusing rate structures across wider regions, and providing LFAs with enhanced incentives to pool their resources to administer rate regulation across a wider region. Thus, we offer some general guidance regarding what a cable operator should follow to accomplish these goals.

28. First, we anticipate that an operator's uniform rates proposal will be based on some meaningful neutral geographic measure, such as the Area of Dominant Influence (ADI), the Designated Market Area, the Basic Trading Area, or the Standard Metropolitan Statistical Area. Where the operator proposes to include additional franchise areas outside of such a region or measure, our case-by-case review will examine the operator's proposal and justification.

29. Second, with respect to which franchise areas should be included in a uniform rate structure, we would be disinclined to approve a scheme in which an operator selects some of its franchise areas in a contiguous geographic region, but excludes others, unless compelling circumstances were shown to justify such an approach. An example of a situation presenting such circumstances could be one in which an upgrade was in progress and the uniform rates became applicable as the upgrade progressed. Typically, channel line-ups will vary widely between pre-upgrade and post-upgrade portions of the system based on differences in capacities. In addition, the costs of an upgrade often cause significant changes in rates, particularly when

⁶⁶Adelphia Comments at 4; Ohio Cable Telecommunications Association ("Ohio Cable") Comments at 3-4; Cablevision Comments at 9-10.

⁶⁷Cole, Raywid Comments at 6; MediaOne Comments at 4.

⁶⁸Cole, Raywid Comments at 7.

⁶⁹Blade Comments at 2-3; NCTA Comments at 10; Time Warner Reply Comments at 15.

⁷⁰Ohio Cable Comments at 6-8; Cole, Raywid Comments at 9; TCI and Continental Comments at 6-7.

⁷¹Ohio Cable Comments at 16.

rates are set based on a cost-of-service showing. Thus, imposing uniform rates simultaneously on an entire region or system that is in the midst of an upgrade would not be reasonable.

30. In this vein, we note that some commenting LFAs argue that a uniform rate structure may result in cross-subsidization among subscribers living in franchise areas where a cable operator's costs of providing service are relatively low costs and those subscribers in franchise areas where costs are higher.⁷² Any cross-subsidization that may occur under a uniform rates structure, however, will be neither significant nor unique. It is important that some measure of cross-subsidization occurs within a cable operator's service rates regardless of where such rates are charged. Even under the existing scheme, where a single BST rate is typically charged throughout only one local franchise area, for example, the costs of serving some portions of the franchise area will be less than the costs of serving others. The limited cross-subsidization that may occur under a uniform rates proposal could actually provide economic benefits if subsidies lead to higher cable penetration. For instance, higher penetration may provide economic efficiencies to a cable operator that could be passed on to consumers. In addition, as stated above, we will be disinclined to approve any proposal that results in a more than minimal increase in CPST rates for a significant proportion of the affected subscribers.

31. Third, with respect to which tiers of regulated service should be offered at uniform rates, we would be inclined generally to ratify a uniform rate proposal that covers all of an operator's BSTs within the proposed uniform rate region. Furthermore, any uniform rate proposal in which BST rates decrease likely will include offsetting CPST rate increases, assuming an operator's overall rates and revenues remain close to neutral under the uniform rate scheme. We believe that in light of the high penetration of at least one CPST in most multi-tiered systems, it will be possible to effect these offsets with minimal CPST rate increases. We also would entertain proposals to offer uniform rates on CPSTs generally, regardless of their penetration. In all cases, however, we will closely examine, and be disinclined to approve, any uniform rate approach that increases the combined tier rate for subscribers by a more than minimal amount.⁷³ This approach will give operators increased flexibility to respond to competition with a uniform rate structure, while at the same time protecting subscribers from excessive rates.

32. Fifth, we note that in the *Notice* we sought comment on whether the particular packages of programming services offered at a uniform rate in multiple franchise areas must be identical.⁷⁴ In response, cable operators urge the Commission to allow an operator broad discretion in dealing with variances among numbers of channels offered in various areas.⁷⁵ With

⁷²See, e.g., Florida Cities Comments at 3-4; Dade County Comments at 3; NJ Ratepayer Advocate Comments at 5.

⁷³See *supra* para. 26.

⁷⁴*Notice*, 11 FCC Rcd at 3800.

⁷⁵Ohio Cable Comments at 6-8; Cole, Raywid Comments at 9; TCI and Continental Comments at 6-7.

respect to the cable operators' comments, we believe generally that the establishment of uniform rates across multiple franchise areas should be permitted where the cable operator is offering the same number of channels on its regulated tiers of programming services. Generally, subscribers in one franchise area should not pay the same rates as those in another franchise area if the amount of programming services received are not the same. Therefore, we would be inclined to accept uniform rate proposals that apply only to franchise areas that have identical numbers of channels on the respective BSTs and CPSTs.

33. However, with respect to whether the packages of services need be identical, we recognize that there may be circumstances beyond the operator's control that cause dissimilarities among tiers of programming services. For instance, differences in PEG access and must-carry requirements or leased access use are factors that might create deviations in the channel line-ups received by subscribers in a contiguous geographic area. Indeed, because of these circumstances, certain LFAs argue that any uniform rates mechanism implemented pursuant to this *Order* will not result in truly uniform rates, and thus will not succeed in reducing confusion for a subscriber moving between different parts of the same uniform rates region.⁷⁶ In order to address these concerns, as well as provide operators with a measure of flexibility in implementing a uniform rates structure, we will take care when evaluating a proposal for uniform rates across franchise areas that do not receive identical programming services to consider the extent and nature of the deviation in programming services, and whether the deviation's impact on subscriber rates is significant. In the event that a deviation based on PEG access costs or other external costs (including franchise-related external costs) is significant, we would consider a requirement that an operator's uniform rates be determined exclusive of such costs; in which case the operator likely would be permitted to add these costs onto the uniform rate on a franchise-by-franchise basis. In this vein, we note that our existing regulations have always permitted cable systems that cover multiple franchise areas having differing franchise fees or other franchise costs to advertise a "fee plus" rate that indicates the core rate plus the range of possible additions, depending on the particular location of the subscriber.⁷⁷ We therefore believe that any subscriber confusion remaining under an operator's uniform rates approach will be less or the same as under our existing rules.

34. Finally, we note that, under the Telecommunications Act of 1996, cable operators may aggregate their equipment costs on a franchise, system, regional, or company level.⁷⁸ The Commission has adopted regulations implementing this provision that, among other things, ease the burden of cable rate regulation on operators and increase administrative efficiency for both

⁷⁶See, e.g., LFA Coalition Reply Comments at 24; NJBPU Comments at 11-12.

⁷⁷47 C.F.R. § 76.946.

⁷⁸Communications Act § 623(a)(7)(A), 47 U.S.C. 543(a)(7)(A).

LFAs and cable operators.⁷⁹ Cable operators seeking to implement uniform rates may avail themselves of those rules to bring uniformity to their equipment rates.

35. Accordingly, we find that implementation of any uniform rate approach as offered in the *Notice* requires resolving several issues, including those of a local nature, that do not lend themselves to global resolution. We find that it is preferable to base our approval of any uniform rate approach on data that accurately reflects the situation of a particular cable operator seeking to establish uniform rates, and the predicted impact on consumers of the operator's proposal. We therefore decline to specify a particular methodology for implementing uniform rates. Rather, as described above, cable operators may submit information in accordance with the procedures outlined above demonstrating that the proposed uniform rates will not be unreasonable.⁸⁰

V. REGULATORY FLEXIBILITY ACT CERTIFICATION

36. As required by the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in CS Docket 95-174 (the "*Notice*"). The Commission sought written public comments on the proposals in the *Notice* including comments on the IRFA. No Comments were received.

37. Although we performed an IRFA in the *Notice*, there were no comments received in response to the IRFA and we believe that we can certify that no Regulatory Flexibility Act Analysis is now necessary.

38. We do not believe that the final rule adopted in the *Report and Order* will have a significant economic impact on a substantial number of small entities, 5 U.S.C. §605(b). The uniform rate option described in this *Report and Order* gives cable operators an additional option when setting rates, and is not mandatory. This rate adjustment option will not force operators to forgo revenues as it is designed to be revenue neutral to cable operators. The Communications Act at 47 U.S.C. §543(m)(2) defines a small cable operator as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." Under the Communications Act, at 47 U.S.C. §543(m)(1), a small cable operator is not subject to the rate regulation requirements of Sections 543(a), (b) and (c) on cable programming services tiers ("CPSTs") in any franchise area in which it serves 50,000 or fewer subscribers.

⁷⁹See 47 C.F.R. § 76.923(a), (c), (f), (g) and (m); *Report and Order* in CS Docket No. 96-57 (Implementation of Section 301(j) of the Telecommunications Act of 1996; Aggregation of Equipment Costs by Cable Operators), 11 FCC Rcd 6778, 6779 (1996).

⁸⁰In light of this finding, we decline to reach the arguments presented by the commenters with respect to the appropriate methodology, region, and other aspects of uniform rates offered for comment in the *Notice*.

39. The Regulatory Flexibility Act defines at 5 U.S.C. § 601(5) "small governmental jurisdictions" as "governments of cities, counties, towns, townships, villages, school districts or special districts with populations of less than 50,000." Under the Commission's current rules, if a local franchising authority ("LFA") has elected to rate regulate the basic service tier ("BST"), a cable operator must submit rate justifications to the LFA on FCC Forms. We do not believe that small LFAs will face a significant economic impact due to this *Report and Order*. The change in our rules adopted herein would not have a significant economic effect on small LFAs because the burden associated with reviewing a uniform rate approach should be no more than the burden under the current regulations. If other rate adjustments are made to the BST at the time of the uniform rate adjustment, or at some time thereafter, the cable operator will be required to submit a rate justification to the LFA that is based on the operator's "underlying rate," *i.e.*, the rate the operator would be charging in the absence of the uniform rate adjustment. The LFA will engage in the same rate review process as would have otherwise occurred for these other rate adjustments. LFA review of the underlying rate entails the same rate review process that would occur normally, without the uniform pricing option adopted herein. Responsibility for the determination of the correctness of the uniform rate adjustment to CPST rates will rest with the Commission because the Commission, and not LFAs, is responsible for insuring that CPST rates are not unreasonable.

40. The Commission will send a copy of this certification, along with this *Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register.

V. FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

41. This *Report and Order* contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Report and Order*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public comments are due 60 days after publication of this *Report and Order* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

42. A copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov. For additional information, contact Dorothy Conway at 202-418-0217 or via the Internet at the above address.

VII. ORDERING CLAUSES

43. Accordingly, **IT IS ORDERED** that, pursuant to the authority granted in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 303(r) and 543, Part 76 of the Commission's rules IS AMENDED as set forth below. The amendments impose information collection requirements and shall become effective upon approval of the Office of Management and Budget ("OMB") but no sooner than 30 days after publication in the Federal Register.

44. **IT IS FURTHER ORDERED** that, the Secretary shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

APPENDIX A**Final Rule**

Part 76 of the Title 47 of the Code of Federal Regulations is amended as follows:

PART 76 -- CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.922 is amended by revising paragraph (c)(2) and adding a new paragraph (n) to read as follows:

Section 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(c) * * *

(2) The Commission's price cap requirements allow a system to adjust its permitted charges for inflation, changes in the number of regulated channels on tiers, or changes in external costs. After May 15, 1994, adjustments for changes in external costs shall be calculated by subtracting external costs from the system's permitted charge and making changes to that "external cost component" as necessary. The remaining charge, referred to as the "residual component," will be adjusted annually for inflation. Cable systems may adjust their rates by using the price cap rules contained in either paragraphs (d) or (e) of this section. In addition, cable systems may further adjust their rates using the methodologies set forth in paragraph (n) of this section.

* * * * *

(n) Further rate adjustments.

(1) Uniform rates. A cable operator that has established rates in accordance with this section may then be permitted to establish a uniform rate for uniform services offered in multiple franchise areas. This rate shall be determined in accordance with the Commission's procedures and requirements set forth in CS Docket No. 95-174.

* * * * *

APPENDIX B**Parties Filing Comments and Reply Comments**Comments

Adelphia Communications Corporation (Adelphia)
Ameritech New Media Enterprises, Inc. (Ameritech)
Blade Communications, Inc. (Blade)
Cablevision Systems Corporation (Cablevision)
Cities of Cape Coral, Greenacres, Lantana, Miami, North Palm Beach, and Pensacola, Florida
(Florida Cities)
City of Rock Hill, South Carolina. (Rock Hill)
City of Dearborn Heights, Michigan (Dearborn Heights)
Cole, Raywid & Braverman (Cole, Raywid)
Massachusetts Cable Television Commission (Massachusetts Commission)
MediaOne, Inc. (MediaOne)
Metropolitan Dade County (Dade County)
National Association of Telecommunications Officers and Advisors (NATOA)
National Cable Television Association, Inc. (NCTA)
New Jersey Division of the Ratepayer Advocate (NJ Ratepayer Advocate)
New Jersey State Board of Public Utilities (NJBPU)
Ohio Cable Telecommunications Association (Ohio Cable)
Tele-Communications, Inc. and Continental Cablevision, Inc. (TCI and Continental)
Time Warner Cable, Inc. (Time Warner)
Town of Ocean City, Maryland (Ocean City)

Reply Comments

City of Ann Arbor, Michigan; City of Dubuque, Iowa; Consolidated City of Indianapolis,
Indiana; Montgomery County, Maryland; City of St. Louis, Missouri (LFA Coalition)
City of Allen, Texas (Allen)
Cole, Raywid & Braverman
MediaOne, Inc.
National Cable Television Association, Inc.
Tele-Communications, Inc. and Continental Cablevision, Inc.
Time Warner Cable, Inc.